

239.7103 Contract clauses.

(a) Use the clause at 252.239-7000, Protection Against Compromising Emanations, in solicitations and contracts involving information technology that requires protection against compromising emanations.

(b) Use the clause at 252.239-7001, Information Assurance Contractor Training and Certification, in solicitations and contracts involving contractor performance of information assurance functions as described in DoD 8570.01-M.

[73 FR 1829, Jan. 10, 2008]

Subpart 239.72—Standards**239.7201 Solicitation requirements.**

Contracting officers shall ensure that all applicable Federal Information Processing Standards are incorporated into solicitations.

[71 FR 39011, July 11, 2006]

Subpart 239.73—Requirements for Information Relating to Supply Chain Risk

SOURCE: 78 FR 69271, Nov. 18, 2013, unless otherwise noted.

239.7300 Scope of subpart.

(a) This subpart implements section 806 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383) and elements of DoD Instruction 5200.44, Protection of Mission Critical Functions to Achieve Trusted Systems and Networks (TSN), at (<http://www.dtic.mil/whs/directives/corres/pdf/520044p.pdf>).

(b) The authority provided in this subpart expires on September 30, 2018 (see section 806(a) of Pub. L. 112-239).

239.7301 Applicability.

Notwithstanding FAR 39.001, this subpart shall be applied to acquisition of information technology for national security systems, as that term is defined at 44 U.S.C. 3542(b), for procurements involving—

(a) A source selection for a covered system or a covered item involving either a performance specification (see 10 U.S.C. 2305(a)(1)(C)(ii)), or an evalua-

tion factor (see 10 U.S.C. 2305(a)(2)(A)), relating to supply chain risk;

(b) The consideration of proposals for and issuance of a task or delivery order for a covered system or a covered item where the task or delivery order contract concerned includes a requirement relating to supply chain risk (see 10 U.S.C. 2304c(d)(3) and FAR 16.505(b)(1)(iv)(D)); or

(c) Any contract action involving a contract for a covered system or a covered item where such contract includes a requirement relating to supply chain risk.

239.7302 Definitions.

As used in this subpart—

Covered item means an item of information technology that is purchased for inclusion in a covered system, and the loss of integrity of which could result in a supply chain risk for a covered system (see section 806(e)(6) of Pub. L. 111-383).

Covered system means a national security system, as that term is defined at 44 U.S.C. 3542(b) (see section 806(e)(5) of Pub. L. 111-383). It is any information system, including any telecommunications system, used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency—

(1) The function, operation, or use of which—

(i) Involves intelligence activities;

(ii) Involves cryptologic activities related to national security;

(iii) Involves command and control of military forces;

(iv) Involves equipment that is an integral part of a weapon or weapons system; or

(v) Is critical to the direct fulfillment of military or intelligence missions but this does not include a system that is to be used for routine administrative and business applications, including payroll, finance, logistics, and personnel management applications; or

(2) Is protected at all times by procedures established for information that have been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept classified in the interest of national defense or foreign policy.

Information technology, in lieu of the definition at FAR 2.1, and *supply chain risk*, are defined in the clause at 252.239-7018, Supply Chain Risk.

239.7303 Authorized individuals.

(a) Subject to 239.7304, the following individuals are authorized to take the actions authorized by 239.7305:

- (1) The Secretary of Defense.
- (2) The Secretary of the Army.
- (3) The Secretary of the Navy.
- (4) The Secretary of the Air Force.

(b) The individuals authorized at paragraph (a) may not delegate the authority to take the actions at 239.7305 or the responsibility for making the determination required by 239.7304 to an official below the level of—

- (1) For the Department of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics; and,
- (2) For the military departments, the senior acquisition executive for the department concerned.

239.7304 Determination and notification.

The individuals authorized in 239.7303 may exercise the authority provided in 239.7305 only after—

(a) Obtaining a joint recommendation by the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Chief Information Officer of the Department of Defense, on the basis of a risk assessment by the Under Secretary of Defense for Intelligence, that there is a significant supply chain risk to a covered system;

(b) Making a determination in writing, in unclassified or classified form, with the concurrence of the Under Secretary of Defense for Acquisition, Technology, and Logistics, that—

- (1) Use of the authority in 239.7305(a)(b) or (c) is necessary to protect national security by reducing supply chain risk;
- (2) Less intrusive measures are not reasonably available to reduce such supply chain risk; and
- (3) In a case where the individual authorized in 239.7303 plans to limit disclosure of information under 239.7305(d), the risk to national security due to the disclosure of such infor-

mation outweighs the risk due to not disclosing such information; and

(c)(1) Providing a classified or unclassified notice of the determination made under paragraph (b) of this section—

(i) In the case of a covered system included in the National Intelligence Program or the Military Intelligence Program, to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the congressional defense committees; and

(ii) In the case of a covered system not otherwise included in paragraph (a) of this section, to the congressional defense committees; and

(2) The notice shall include—

(i) The following information (see 10 U.S.C. 2304(f)(3)):

(A) A description of the agency's needs.

(B) An identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception.

(C) A determination that the anticipated cost will be fair and reasonable.

(D) A description of the market survey conducted or a statement of the reasons a market survey was not conducted.

(E) A listing of the sources, if any, that expressed in writing an interest in the procurement.

(F) A statement of the actions, if any, the agency may take to remove or overcome any barrier to competition before a subsequent procurement for such needs;

(ii) The joint recommendation by the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Chief Information Officer of the Department of Defense as specified in paragraph (a);

(iii) A summary of the risk assessment by the Under Secretary of Defense for Intelligence that serves as the basis for the joint recommendation specified in paragraph (a); and

(iv) A summary of the basis for the determination, including a discussion of less intrusive measures that were